

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEMETRICE DEAN BREWER,

Petitioner,

v.

Civil No. 05-CV-40375-FL
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT COURT

KURT JONES,

Respondent,

_____ /

OPINION AND ORDER OF SUMMARY DISMISSAL

Petitioner Demetrice Dean Brewer, presently incarcerated at the Carson City Correctional Facility in Carson City, Michigan, has filed a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, in which he challenges his conviction for assault with intent to murder, M.C.L.A. 750.83. On January 6, 2006, Magistrate Judge R. Steven Whalen signed an "Order to Correct Deficiency," in which petitioner was ordered to submit a \$5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty one days of the order. Petitioner's application is subject to dismissal, because he failed to comply with the order of deficiency by either submitting the \$5.00 filing fee or an application to proceed *in forma pauperis*.

If a prisoner who seeks habeas corpus relief does not comply with a district court's directions in a deficiency order, regarding the prisoner's failure to pay the full filing fee and his failure to provide the required documentation to apply to proceed *in forma pauperis*, the district court must presume that the prisoner is not a pauper, assess the full filing fee, and dismiss the case for want of prosecution. See *Gravitt v. Tyszkiewicz*, 14 Fed. Appx. 348,

349 (6th Cir. 2001)(citing *McGore v. Wigglesworth*, 114 F. 3d 601, 605 (6th Cir. 1997)). The deficiency order clearly stated that petitioner was required to submit either the \$5.00 filing fee or an application to proceed *in forma pauperis*. The deficiency order also expressly warned petitioner that failure to comply with the order could result in the dismissal of his action. Because petitioner failed to pay the filing fee or submit the required application to proceed *in forma pauperis*, his petition is subject to dismissal for want of prosecution. *Gravitt*, 14 Fed. Appx. at 349.

Based upon the foregoing, **IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus is **DISMISSED WITHOUT PREJUDICE**.

Dated: March 20, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on March 21, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

_____, and
I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Demetrice Brewer.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845